

IV. BELLSOUTH'S UNE PRICES ARE FULLY COMPLIANT WITH THE 1996 ACT AND THIS COMMISSION'S RULES

BellSouth's Application and its supporting affidavits, bolstered by the filings of the GPSC and LPSC in this proceeding, establish beyond serious dispute that those agencies have repeatedly demonstrated their "commitment to TELRIC-based rates," *New York Order* ¶ 238, and have adopted a full set of lawful UNE rates. Both agencies adopted those TELRIC-compliant rates after reviewing extensive factual records, including detailed cost studies, and convening live hearings at which BellSouth witnesses were subject to cross-examination regarding the forward-looking nature of BellSouth's proposed rates. Additionally, both agencies cut key cost inputs substantially to remove any conceivable concern regarding the forward-looking nature of BellSouth's rates. *See Application* at 40, 44, 49-50. Perhaps for that reason, DOJ – which identified several pricing concerns in BellSouth's *Second Louisiana* application and which has repeatedly raised pricing concerns in more recent proceedings – raises no pricing issues at all in this case.

Despite these facts, the long-distance incumbents argue that several state commission pricing determinations provide a basis to reject this Application. Those commenters bear a heavy burden in their attempt to overturn the reasoned judgments of the state commissions on these intensely factual issues – issues as to which there is no one correct result. *See, e.g., Kansas/Oklahoma Order* ¶ 91 ("TELRIC-based pricing can result in a range of rates"). The long-distance carriers can overcome the substantial deference due to the state commissions only by demonstrating a violation of "basic TELRIC principles" or "clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." *New York Order* ¶ 244.

They do not come close to meeting that justifiably strict test. Instead, they raise a smattering of insubstantial issues. Some of their arguments have been expressly rejected by this Commission in prior cases; others rely solely on inaccurate comparisons to rates charged by other companies (comparisons that, in any event, favor BellSouth); and still others simply complain about reasonable judgments of state commissions on fact-intensive issues. Indeed, in some cases, the long-distance carriers ask this Commission to decide factual issues that they never bothered to raise in the state proceedings. AT&T, for instance, raises a series of issues about Louisiana rates, even though the only testimony that it submitted in that state proceeding involved BellSouth's non-recurring and DUF rates, and it did not even participate at the live hearing before the LPSC. There could hardly be better evidence that AT&T is not concerned about any anticompetitive impact from these rates, but rather is simply trying to prevent pro-competitive long-distance entry.

BellSouth will address the arguments that the CLECs press most strenuously in this brief. All the CLEC arguments are rebutted in detail in the reply affidavits of Daonne Caldwell (Reply App., Tab C) and John Ruscilli/Cynthia Cox.

Switching. In challenging BellSouth's forward-looking switching rates approved by the GPSC, AT&T relies on the same argument that both this Commission and the D.C. Circuit have rejected: that TELRIC somehow requires that only the discounts associated with "newly purchased" switches should be considered. *AT&T Comments* at 52-53; *AT&T Baranowski Decl.* ¶ 13. As in prior cases, however, in the state proceedings at issue here, BellSouth relied on a cost study that employed a reasonable, forward-looking mix of new-switch and switch-addition discounts. The result is a switch discount that fairly reflects the characteristics of a forward-looking network. *See BellSouth Caldwell Reply Aff.* ¶ 42. Indeed, AT&T has elsewhere

acknowledged that such a mix of discounts is appropriate. The same AT&T witness that raised this issue in Georgia has testified in other proceedings that “the discount percentage input should reflect the mix of new switch and growth lines that the [incumbent] plans and has committed to purchase.” *Id.* ¶ 45 (quoting testimony of AT&T witness Catherine Petzinger before the California Public Utilities Commission).

Settled precedent, moreover, established that the switch-discount methodology accepted by the GPSC and the LPSC is wholly lawful. In the *New York Order*, this Commission explicitly rejected AT&T’s argument “that TELRIC does not permit recovery of the cost of ‘augmented switches,’ which are existing switches with capacity upgrades.” *New York Order* ¶ 243. AT&T appealed this issue to the D.C. Circuit, which similarly rejected AT&T’s claim. *AT&T Corp. v. FCC*, 220 F.3d 607, 617-18 (D.C. Cir. 2000). The court noted that “FCC counsel explained that growth additions to existing switches cost more than new switches only because vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors’ technology to update the switches.” *Id.* at 618. Based on that explanation, the court found that “the Commission reasonably concluded” that “inclusion of growth additions” “did not violate TELRIC.” *Id.* Undaunted, AT&T raised this same issue in subsequent section 271 cases, and the Commission has rebuffed it each time. *See Massachusetts Order* ¶ 33; *Kansas/Oklahoma Order* ¶ 77. Inexplicably, AT&T’s Comments do not even cite those directly relevant decisions.

Indeed, the only legal support AT&T claims for its position comes from the cost model employed in the Commission’s *Universal Service* proceeding, which the Commission has repeatedly warned “should *not* be relied upon to set rates for UNEs.” *Kansas/Oklahoma Order* ¶ 84 (emphasis added). AT&T fails to acknowledge that holding either. Accordingly, AT&T’s

assertion that BellSouth's Georgia switching rates are "inflated," *AT&T Comments* at 52, draws no support from the relevant Commission orders.

Nor is AT&T's argument supported by its claim that the forward-looking switching rates approved by the GPSC are somehow out-of-line with the rates in 271-approved states. As an initial matter, AT&T's analysis is irrelevant because this Commission engages in interstate comparisons only *after* it has determined that a violation of basic TELRIC principles has occurred. *See, e.g., Kansas/Oklahoma Order* ¶¶ 81-82 ("[g]iven our finding [of TELRIC noncompliance] concerning the fill factor for the distribution cable, we must determine whether the ALJ's error is substantial"; "we agree with the Department of Justice that we may, in appropriate circumstances, consider rates [from other states] that we have found to be based on TELRIC principles").⁴⁵ Even then, moreover, the Commission has never compared rates charged by different BOCs in different states.

In any event, even if such a comparison were appropriate, BellSouth's Georgia switching rates in fact compare very favorably to those in 271-approved states. As demonstrated in the joint reply affidavit of John Ruscilli and Cynthia Cox, on an apples-to-apples basis, and using assumptions provided by this Commission, monthly switching costs in Georgia (and in Louisiana) in fact compare favorably to those approved in New York and other states, even without considering cost differences between the states. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 19.

⁴⁵ Thus, it must be noted that CompTel's summary of the Commission's test for TELRIC compliance is fundamentally wrong. CompTel asserts that the "operating principle" of the Commission's TELRIC inquiry requires it to engage, in the first instance, in comparisons between states based upon the cost differences projected by the HCPM. *CompTel Comments* at 10-11. On the contrary, as the discussion in the text illustrates, the Commission looks to other states only *after* it concludes that the state commission has made a fundamental error in applying TELRIC.

Nor does the fact that BellSouth has submitted new cost studies in the ongoing Georgia cost proceeding cast doubt on the TELRIC compliance of BellSouth's current Georgia rates. As AT&T itself acknowledges, costs change over time. *See AT&T Comments* at 49. Some will rise, and some will fall. "[R]ates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions." *Massachusetts Order* ¶ 36. That truism in no way means that the current rates are not TELRIC-based. In the *Massachusetts Order* and in other proceedings, the Commission has considered rates set several years earlier, and viewed the fact that, as here, a new cost proceeding was underway as a *positive* factor ensuring that prices will continue to reflect TELRIC principles on a going-forward basis. The Commission has not, as AT&T suggests, established that this is somehow a disqualification for section 271 relief. *See Massachusetts Order* ¶ 35. Indeed, the Commission has relied on the existence of such a proceeding even where, unlike here, commenters had raised "legitimate concerns" about certain inputs. *Id.* ¶ 38. The fact that BellSouth has recognized those instances where the GPSC may want to lower rates at the conclusion of its current proceeding simply demonstrates BellSouth's good faith, and should provide added assurance, if any were necessary, that rates in Georgia will continue to be forward-looking and consistent with competitive entry. *See also BellSouth Caldwell Reply Aff.* ¶ 89.

AT&T's attack on BellSouth's Louisiana switching rates consists of invalid comparisons to rates established in states served by other BOCs. The appropriate question, however, is whether the LPSC properly applied basic TELRIC principles and made factual conclusions on key issues that are within a broad range of reasonableness. For the reasons explained in the initial and reply affidavits of Daonne Caldwell, it has. BellSouth submitted switching studies that modeled forward-looking costs, and the LPSC reasonably adopted those studies, after

altering key inputs in a manner that reduced rates substantially. Indeed, AT&T makes no serious argument otherwise. That should be the end of the matter. In any event, however, BellSouth's Louisiana switching rates again compare very favorably to those in 271-approved states. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 19.

Daily Usage File ("DUF") Charges. Commenters also raise objections to BellSouth's DUF charges. DUF charges relate to the cost of providing call records that are used by CLECs to bill their customers and other carriers. Access Daily Usage File ("ADUF") records allow CLECs to bill other carriers for access and reciprocal compensation. *See BellSouth Caldwell Reply Aff.* ¶ 79. Optional Daily Usage File ("ODUF") records permit UNE-P providers and resellers to charge their customers for such things as operator-assisted calls and *69 calls. *See id.* ¶ 80. Enhanced Optional Daily Usage File ("EODUF") records give usage data to resellers that need that data for flat-rated lines. *See id.* ¶ 81.

Significantly, although AT&T, WorldCom, and others challenge BellSouth's DUF charges before this Commission, they do not explain why they failed to challenge such charges when they were first proposed and adopted by the GPSC almost two years ago. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 24. They also provide no explanation as to how the GPSC and the LPSC allegedly violated TELRIC principles in establishing these rates. No such violation exists. As Daonne Caldwell explains in her reply affidavit (¶ 82), BellSouth modeled these costs based on forward-looking estimates of the computer resources necessary to develop these files and to support their on-going usage.

Unable to find a violation of any FCC rule here, the commenters are forced to argue only that these charges are somehow "excessive" when compared either to other states or to the proposed rates in Georgia. *E.g., AT&T Comments* at 51; *WorldCom Frentrup Decl.* ¶ 24. Again,

however, these comparisons are invalid. First, to the extent that the proposed Georgia rates are lower than the current rates, BellSouth's Georgia rates are subject to true-up, so CLECs will gain the benefit of any reduction. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 24.

BellSouth's DUF rates in Louisiana are higher than those proposed in Georgia as a result of more recent demand data available in the current Georgia proceeding. Nonetheless, the Louisiana DUF rates were calculated and approved by the LPSC applying appropriate forward-looking cost analysis, and the best demand data available at the time the record closed in that proceeding. In this respect, the Commission must recognize that cost proceedings in the states are always going to be at different points in the cycle. As such, BellSouth and the state commissions can only be expected to rely on the best information available at a particular point in time. And, of course, this cuts both ways – if CLECs were to get intra-proceeding relief where costs go down, BellSouth would expect to get such relief when costs go up, as they do in many instances. The result would be UNE prices in constant flux; a result that is not good from anyone's perspective.

Moreover, contrary to the commenters' belief, comparisons to other states are particularly difficult to make in this instance, as other BOCs appear to recover these costs through a different mix of charges (for instance, a monthly per-port charge in Pennsylvania) that do not appear to be reflected in the comparisons submitted by CLECs. *See id.* ¶ 29. Indeed, CLECs reach widely varying conclusions as to estimated monthly rates in Georgia, with AT&T claiming that DUF charges will typically add up to \$2.96 and WorldCom claiming \$1.10. *See WorldCom Comments* at 60; *AT&T Comments* at 51.

Nor is there any basis for CLEC claims of discrimination between the way that BellSouth computes these charges for them and for other carriers. As explained in the reply affidavit of

John Ruscilli and Cynthia Cox (¶ 27), BellSouth provides different information to carriers, whether CLECs or independents, that have their own switches and those that use BellSouth's switching. BellSouth thus treats CLECs like all other similarly situated carriers. Finally, contrary to the allegation of WorldCom's declarant, *WorldCom Frentrup Decl.* ¶ 25, BellSouth does not recover DUF costs twice; rather, it removes the costs that are directly assigned to DUFs from its shared and common cost factor. *See BellSouth Caldwell Reply Aff.* ¶ 38.

Loops. AT&T and WorldCom both raise various objections to BellSouth's loop methodologies and costs in Georgia and Louisiana. These claims are unsupported by evidence, inconsistent with this Commission's own judgments, and infected by other errors. In any event, in the end BellSouth's loop rates compare favorably to those this Commission has found to be TELRIC compliant.

First, both AT&T and WorldCom claim that BellSouth's unbundled loop studies in Georgia and Louisiana improperly fail to include integrated digital loop carrier ("IDLC"). *See AT&T Comments* at 54-55; *WorldCom Comments* at 55-56. At the outset, it is important to stress again that the studies in question were solely for *unbundled* loops. Different studies and assumptions (including the extensive use of IDLC) were employed for loops combined with switch ports. *See BellSouth Caldwell Reply Aff.* ¶ 55.

This distinction in BellSouth's Georgia and Louisiana studies is entirely appropriate. To provide an IDLC loop separate from the switch ports requires using such methods as "side door grooming" or "hairpinning," multiple switch hosting, and other work-arounds. *See id.* ¶ 53. This Commission has expressly recognized that these methods "have not proven practicable" and are "very expensive." Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications*

Act of 1996, 15 FCC Rcd 3696, ¶ 217 nn.417-18 (1999) (“*UNE Remand Order*”). These approaches are thus not efficient or forward-looking, and it was, to say the least, not a violation of “basic TELRIC principles” to exclude IDLC loops for the purpose of pricing stand-alone loops. Indeed, although AT&T and WorldCom champion the use of IDLC in this context, they acknowledge none of the costs associated with “side-dooring” or other processes, and thus have not begun to demonstrate that such an approach would be efficient and forward-looking. *See BellSouth Caldwell Reply Aff.* ¶ 54. The argument that IDLC is the “most efficient, forward looking . . . technology” for provisioning unbundled loops, *AT&T Baranowski Decl.* ¶ 21, is thus wholly without evidentiary support.⁴⁶

Nor is AT&T correct that BellSouth’s Georgia loop rates are based on a study that sampled BellSouth’s “*embedded network*” and therefore was not forward-looking. *AT&T Comments* at 56. Contrary to the suggestions of AT&T and its declarant Michael Baranowski, BellSouth actually recast the make-up of its loops to reflect forward-looking design by assuming the use of fiber and digital loop carrier on longer loops, changing the gauge of cable, and limiting the use of bridge tap, among other things. *See BellSouth Caldwell Reply Aff.* ¶ 5.⁴⁷ Indeed, nearly every loop in the study was redesigned to accord with forward-looking assumptions. *See*

⁴⁶ Nor is it correct, as WorldCom claims, that, where IDLC is included in a study, the only proper result is to assume 100% use of IDLC that uses the GR-303 protocol. *See WorldCom Comments* at 56. This precise issue was presented to the GPSC, which required BellSouth to include *more than 20 times* as much GR-303 in its study as BellSouth’s network actually contains, but rejected the argument that it should be assumed in all cases. *See BellSouth Caldwell Reply Aff.* ¶ 57. The GPSC’s decision on that point is consistent with AT&T’s own witness’s statement that GR-303 deployment may not make sense in all circumstances. *See id.*

⁴⁷ Contrary to AT&T’s assertion, a forward-looking network is reasonably understood to contain at least some bridged taps because, without them, the cost of rearranging loops would increase dramatically. *See BellSouth Caldwell Reply Aff.* ¶ 13. BellSouth’s witness explained this point to the GPSC in significant detail, and the GPSC acted reasonably in crediting this evidence. *See id.*

id. Where BellSouth did not change a particular loop feature, that was because that feature was consistent with forward-looking efficient design. *See id.* ¶ 7. Accordingly, as BellSouth explained in its Application, its sampling methodology – which was approved by *every* state commission in BellSouth’s region – is entirely consistent with TELRIC principles.⁴⁸

As BellSouth further demonstrated in its initial filing, this argument is ultimately beside the point. The affidavit of Jamshed Madan and Micheal Dirmeier of the Georgetown Consulting Group, which was filed with BellSouth’s Application (at App. A, Tab N), showed in detail that, if the GPSC had adopted the AT&T/MCI Hatfield model and used inputs consistent with the ones the GPSC actually ordered, not only would the key input at issue here be less advantageous to CLECs (that is, the model would have assumed longer loop lengths); it would also have led to *higher* rates.

Unable to identify any flaw in that affidavit, AT&T responds with a disingenuous claim. It argues that, if the GPSC had adopted the Hatfield Model *with AT&T’s input assumptions*, that would have led to lower rates. *See AT&T Comments* at 58.

That is irrelevant. What is important – and unchallenged – is that if one adopts inputs *consistent with the GPSC’s holdings* (that is, if one compares apples-to-apples),⁴⁹ the Hatfield model produces higher rates than the ones the GPSC adopted. *See BellSouth Caldwell Reply Aff.*

⁴⁸ AT&T’s argument that BellSouth’s sample excluded certain shorter loops is puzzling, in light of AT&T’s explicit concession that the GPSC required the change that AT&T advocates. *AT&T Comments* at 57.

⁴⁹ It is this alteration to accord with the GPSC’s holdings that AT&T terms “radical[].” *AT&T Comments* at 58.

¶ 8. AT&T's arguments about the different models are thus irrelevant. Even if AT&T were correct, it would not have led to lower rates. That dispositive point is unrebutted here.⁵⁰

The long-distance incumbents' Louisiana-specific loop arguments are no more persuasive. Although those parties do not contest the validity of the BellSouth Telecommunications Loop Model© ("BSTLM") used in Louisiana, WorldCom does argue that it is improper to use different scenarios to model costs for different kinds of loops. *See WorldCom Frentrup Decl.* ¶ 3; *see also ASCENT Comments* at 18. In fact, as Daonne Caldwell explained in her opening affidavit (¶¶ 73-74 (Application App. A, Tab D)) without substantive rebuttal, the use of those scenarios is necessary to ensure recovery of costs, and at the same time is consistent with TELRIC principles. For instance, if BellSouth always assumed the "combo" scenario (as some CLECs have urged), costs for some stand-alone loops would necessarily be understated. That is true for a simple reason. As the LPSC staff understood, before a voice grade circuit served by digital loop carrier can go to a CLEC switch, the loop must be removed from the DLC digital DS1, converted to voice grade, and terminated on the main distribution frame. The costs for this conversion and the MDF termination are not included in the combo scenario. *See BellSouth Caldwell Reply Aff.* ¶ 64 (quoting LPSC Staff post-hearing brief). This example demonstrates that different specifications are appropriate to each UNE (or combination of UNEs), and it is appropriate for the model to take that fact into account in setting costs for that UNE.

⁵⁰ Even if true (which it is not), AT&T's argument, *AT&T Comments* at 59, that loop costs have declined since 1996 is irrelevant for the same reasons that were discussed above in the switch context. Costs often evolve over time, and the proper response to that fact is to have periodic cost reviews, which is precisely what the GPSC is doing. In any event, AT&T's showing on this point (as on the switching point) is based on numerous errors. *See BellSouth Caldwell Reply Aff.* ¶¶ 40-41.

At the same time, however, and contrary to WorldCom's argument, the entire quantity of lines is considered in each scenario, thus ensuring that economies of scale will be reflected. *See id.* ¶ 42. For this reason, the LPSC, after receiving extensive, conflicting testimony on this specific issue, acted reasonably in rejecting WorldCom's argument and adopting BellSouth's approach as, in the LPSC's words, the "most reasonable and accurate." Order, *Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates*, Docket No. U-24714(A), at 8, (LPSC Sept. 21, 2001) (Application App. F – La., Tab 40). Indeed, every state commission in BellSouth's region that has decided the issue has concurred in that judgment. *See BellSouth Caldwell Reply Aff.* ¶ 68.

Nor have AT&T and WorldCom given the Commission any reason to question the LPSC's fact-based judgment as to an appropriate fill factor. The 41% fill factor approved in Louisiana based on the specific evidence presented to the LPSC is within the range of factors that have been approved by this Commission in the past. *See Massachusetts Order* ¶ 39 (approving application with a 40% fill factor).⁵¹ Moreover, contrary to AT&T's assertion, *AT&T Baranowski Decl.* ¶ 36, there was substantial record evidence that this was an appropriate forward-looking fill factor. In particular, Kimberly Dismukes, the LPSC's pricing consultant, had testified in the prior LPSC pricing proceeding that 42.9% was an appropriate fill factor for Louisiana. *See BellSouth Caldwell Reply Aff.* ¶ 22. Because BellSouth's new proposed fill factor was very close to that figure and because BellSouth's assumptions were "well-defended," the LPSC determined that this input was appropriate. *See id.* ¶ 23. By contrast, there was no record support for the 50% figure championed by AT&T. Indeed, no party that participated in

⁵¹ AT&T's claim that the "mid-point" of the Massachusetts fill factors was 52.5% is disingenuous, *AT&T Comments* at 59; the analogous fill factor to the one at issue here was 40%.

the recent LPSC proceedings offered any reasoned explanation justifying a higher fill factor. *See id.* ¶¶ 23-28. (As noted above, AT&T chose not to participate in the LPSC's live hearing and challenged only BellSouth's nonrecurring costs and its DUF costs in its lone written filing.) In light of that fact, the LPSC's decision to adopt BellSouth's fill factor, which was supported by a cost study and significant documentation, is particularly reasonable.⁵²

Finally, even if there were any reason to doubt the particular judgments of the LPSC and GPSC as to loop rates (which there is not), comparing BellSouth's loop rates to those in 271-approved states (as the long-distance incumbents urge), again leads to the conclusion that BellSouth's rates are reasonable and TELRIC compliant. The statewide average loop in Georgia costs only \$2.48 per month more than the approved loop rate in New York even though the HCPM would predict a difference of more than \$4.00. Similarly, the average Louisiana loop costs \$3.28 more than in New York even though HCPM would predict a difference of \$8.26. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 14.

Loading Factors. Finally, AT&T, WorldCom, and ASCENT claim that, in both Georgia and Louisiana, BellSouth used "loading factors" that were unsupported by record evidence and that rely on embedded costs. *See, e.g., AT&T Baranowski Decl.* ¶¶ 5-10; *WorldCom Frentrup Decl.* ¶¶ 13-15; *ASCENT Comments* at 20. They are wrong.

First, BellSouth has provided extensive documentation as to the methodology, data sources, and assumptions used in the development of these factors. *See BellSouth Caldwell Reply Aff.* ¶ 69. Indeed, BellSouth has even provided electronic copies of files so that users

⁵² ASCENT also briefly challenges some of BellSouth's other inputs, including its productivity factor. *See ASCENT Comments* at 20. Daonne Caldwell demonstrates in her reply affidavit (¶¶ 84-85) that the GPSC and LPSC acted well within the zone of reasonableness in setting these inputs.

could alter inputs. *See id.* The LPSC's expert thus specifically testified that she was able to review the factors and understand the methodology. *See id.* ¶ 70.

It is similarly untrue that these factors are based on embedded cost. Loading factors reflect projected investments in pole, conduit, land, and other costs. *See id.* ¶ 72. Similarly, while in-plant factors use current costs as a starting point, they use those costs only to create a *ratio* that is then applied to forward-looking estimates of investments to create a forward-looking estimate of the cost of installing those investments. *See id.* ¶ 71. Indeed, because BellSouth's approach is so clearly forward-looking, CLECs hardly bothered to dispute this point in the state proceedings where this was actually decided. WorldCom ignored this issue completely in Georgia, and AT&T's brief contained a single conclusory paragraph about "embedded cost data." *See id.* ¶ 76. Nor did the CLECs offer any reasonable alternative measure. *See id.* In Louisiana, neither AT&T nor WorldCom raised the issue, and the lone party that contested BellSouth's loading factors suggested that the LPSC adopt for UNE prices the loading factors that the Florida PSC has used for universal service purposes, a result that even the Florida Commission has rejected. *See id.* ¶ 77.

V. BELLSOUTH PROVIDES NONDISCRIMINATORY ACCESS TO LOOPS

In its Application, BellSouth demonstrated that it has fully complied with its obligations under checklist item 4. No commenter has even arguably called BellSouth's compliance into question, and the vast majority of CLEC commenters can do no more than seek to expand the scope of BellSouth's legal obligations beyond those definitively established by this Commission. While a few CLECs have alleged isolated performance deficiencies, their unsubstantiated assertions cannot undercut the comprehensive, objective performance data that capture all aspects of BellSouth's pre-ordering, ordering, provisioning, and maintenance systems. As demonstrated by BellSouth's excellent record, BellSouth provides nondiscriminatory access to

unbundled loops and related services in a manner that provides Georgia and Louisiana CLECs a meaningful opportunity to compete.

A. Stand-Alone Loops

As BellSouth has explained, comprehensive performance data unequivocally demonstrate that BellSouth's tested processes and procedures provide nondiscriminatory access to local loop facilities in both Georgia and Louisiana. BellSouth's GPSC- and LPSC-approved SQM plans capture BellSouth's performance in the pre-ordering, ordering, and provisioning of unbundled loops, providing a comprehensive portrait of BellSouth's performance disaggregated by loop type. *See generally BellSouth Varner Ga. Aff.* ¶¶ 189-244; *BellSouth Varner La. Aff.* ¶¶ 203-257 (Application App. A, Tab U).

1. Hot Cuts

BellSouth offers three different hot cut processes, allowing CLECs to choose that process which best fits their resources and their business priorities. Performance data for both Georgia and Louisiana establish that BellSouth provisions working hot-cut loops in a timely manner, and with a minimum of service disruptions. For this reason, the GPSC and the LPSC each have held that "BellSouth has satisfied its hot cut obligations." *GPSC Comments* at 161-63; *see also LPSC Evaluation* at 58-59.

AT&T alone makes a substantive challenge to BellSouth's hot-cut performance, and its comments are misguided.⁵³ While AT&T focuses most of its attention on highlighting the minor

⁵³ KMC Telecom criticizes BellSouth for failing to perform timely switch translations, but the problem is of KMC's own making. *KMC Comments* at 6-8. As Keith Milner explained in his opening affidavit, BellSouth technicians release the switch disconnect order as soon as the CLEC accepts as complete the coordinated conversion, and then continue to monitor the work order to ensure proper disconnection. *See BellSouth Milner Aff.* ¶ 151 (Application App. A, Tab O). KMC Telecom, however, has consistently failed to accept the hot-cut loop for several hours after BellSouth has completed the conversion and called KMC Telecom to request acceptance.

disparities between the specific performance metrics adopted by the states of Georgia and Louisiana and those developed in New York, *see AT&T Comments* at 40-41; *AT&T Berger Decl.* ¶¶ 62-71, this Commission has always recognized that “individual states and BOCs may define performance measures in different ways.” *Pennsylvania Order* ¶ 79 n.275. In the Texas proceedings, AT&T similarly argued that Southwestern Bell could not establish checklist compliance because the Texas performance metrics differed from those employed in New York. The Commission rejected AT&T’s position, explaining that “[w]ith each Application we are presented with a different set of circumstances: new and differently defined performance measurements, state proceedings with different histories, new processes by which BOCs perform necessary functions for competing carriers, and new competing carrier concerns. Although the hot cut timeliness and quality issues we assess remain consistent, the evidence presented will vary from one Application to the next.” *Texas Order* ¶ 257.

The GPSC- and LPSC-approved SQM captures BellSouth’s performance across all three aspects of hot-cut provisioning on which the Commission has focused its attention – timeliness, outages, and troubles.

Several metrics collectively measure BellSouth’s ability to perform coordinated conversions in a timely manner.⁵⁴ Performance measure B.2.13 and B.2.15 capture the

When BellSouth pulled KMC Telecom’s records for April 2001, it discovered that KMC Telecom waited more than four and a half hours on average before accepting a completed conversion. *See id.*

⁵⁴ DOJ recognizes as much in its evaluation of BellSouth’s application. *See DOJ Evaluation* at 37 n.130. DOJ goes on to suggest that the GPSC and LPSC adopt new SQM metrics to track such aspects of BellSouth’s performance as the interval between order completion and CLEC notification. *See id.* Both the GPSC and the LPSC have established collaborative mechanisms for reviewing and revising BellSouth’s performance measurements, and DOJ’s proposals can be taken up in these proceedings. *See General Order BellSouth Telecommunications, Inc. Service Quality Performance Measurements*, Docket No. U-22252(C)

percentage of conversions that BellSouth begins to work more than 15 minutes before or more than 15 minutes after the scheduled start time, thereby covering any difference between the scheduled and the actual start time. Performance measure B.2.14 captures the percentage of coordinated conversions that BellSouth completes in less than 15 minutes, covering the duration that it takes BellSouth to complete each hot cut from start to finish. The duration measures imposed by the GPSC and LPSC allow 15 minutes for each loop to be cut. Once a cut starts, BellSouth has 15 minutes multiplied by the number of loops on the order to complete the cut. On average, a cutover order involves three loops. *See Ex Parte* letter from Jonathan Banks, BellSouth, to Magalie Roman Salas, Secretary, FCC (filed Oct. 9, 2001). Thus, on average, BellSouth has 45 minutes to complete a cutover order. However, if the order contains only one loop, BellSouth has only 15 minutes to complete the cut. BellSouth has consistently met these hot-cut duration measures over the last several months.

BellSouth additionally has provided data that capture the amount of time that elapses between the cutover completion and CLEC notification. The notification time averaged two minutes and 45 seconds between May and July 2001, and BellSouth notified CLECs within 15 minutes of completion for 98.5% of conversions performed during that same time period. *See id.*

In sum, BellSouth's measures collectively capture the amount of time that elapses between the scheduled start time and CLEC notification, the time frame upon which this

at 4, (LPSC May 14, 2001) (Application App. D – La., Tab 148); *LPSC Staff Final Recommendation* at 9; Notice, *BellSouth Telecommunications Service Quality Performance Measurements Six-Month Review*, Docket No. U-22252(C) (LPSC Sept. 25, 2001) (Application App. G – La., Tab 32); Order, *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, Docket No. 7892-U (GPSC Jan. 16, 2001) (Application App. D – Ga., Tab 10).

Commission has focused its attention. The data demonstrate that BellSouth performs coordinated conversions in a timely manner in both Georgia and Louisiana.

AT&T's attempt to derive a contrary conclusion from its data is unavailing. *See generally AT&T Berger Decl.* As K.L. Ainsworth explains in his reply affidavit, BellSouth has gone back and recalculated the percentage of AT&T orders of ten loops or less that BellSouth completes within one hour of the scheduled start time. The records indicate that BellSouth completed within an hour 96.6% of the 84 time-specific conversions in May, 100% of the 42 time-specific conversions in June, 93.6% of the 47 time-specific conversions in July, and 100% of the 53 time-specific conversions in August. *See BellSouth Ainsworth Reply Aff.* ¶¶ 44-47 & Exh. KLA-14. As the Ainsworth reply affidavit explains, AT&T's contrary data are demonstrably incomplete (AT&T ignores many of its orders) and thus incorrect.

Nor is there any merit to AT&T's claim that BellSouth's performance measures do not capture "[w]hether the customer's service was impaired during the provisioning process." *AT&T Berger Decl.* ¶ 63. While performance measure B.2.16 specifically assesses the average recovery time for outages on conversion, the underlying data can be used to calculate the actual percentage of outages caused by BellSouth during hot cut provisioning. In Georgia, CLEC customers experienced only 15 outages during the 6,673 conversions that BellSouth completed between May and July, *see BellSouth Varner Ga. Aff.* ¶ 243, and only ten outages on 5,118 conversions during August and September. *See BellSouth Monthly State Summaries – Georgia, August-September 2001 (B.2.16).* Moreover, measure B.2.13 establishes that BellSouth caused a mere eight premature loop cutover disconnects in Georgia during the last five months (May to September). In Louisiana, CLEC customers experienced only four outages during the 1,391 conversions that BellSouth completed between May and July, *see BellSouth Varner La. Aff.*

¶ 256, and only four outages on 929 conversions during August and September. *See* BellSouth Monthly State Summaries – Louisiana, August - September 2001 (B.2.16). BellSouth caused only one premature disconnect in Louisiana over the past five months. *See id.* May - July 2001 (B.2.13). Overall then, comprehensive performance data demonstrate that BellSouth has performed coordinated conversions with minimal service disruptions in both Georgia and Louisiana, easily satisfying the relevant benchmark for outages.

BellSouth also has demonstrated that it provisions quality hot cut loops in both Louisiana and Georgia, and that CLECs have reported troubles within seven days for fewer than 2% of hot cut loops. *See* BellSouth Monthly State Summaries – Georgia, May - September 2001 (B.2.17); BellSouth Monthly State Summaries – Louisiana, May - September 2001 (B.2.17); *see also* *BellSouth Varner Reply Aff.* Exh. AJV-10, ¶ 69. In each state, BellSouth's performance has consistently been in line with this Commission's standards for provisioning quality.

2. Stand-Alone Loop Performance

Comprehensive performance data also demonstrate that BellSouth provides nondiscriminatory access to local loop transmission facilities in both Georgia and Louisiana. While a handful of CLECs have contested isolated aspects of BellSouth's performance in the pre-ordering, ordering, provisioning, and maintenance of unbundled loops, they largely reiterate unsubstantiated claims that have already been considered and rejected by the Louisiana and Georgia PSCs.⁵⁵ As this Commission repeatedly has recognized, such anecdotal evidence cannot undercut "objective performance data that demonstrate that [BellSouth] satisfies the statutory

⁵⁵ Other CLECs expend a great deal of ink challenging BellSouth's performance in provisioning special access circuits. *See, e.g., Mpower, et al. Comments* at 19-24; *El Paso, et al. Comments* at 1-13. Yet this Commission does "not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance. . . ." *Texas Order* ¶ 335; *see also New York Order* ¶ 340.

nondiscrimination requirement.” *Texas Order* ¶ 50; *see also Kansas/Oklahoma Order* ¶¶ 28-29; *Massachusetts Order* ¶ 11.

As BellSouth explained in its Application, it consistently meets a greater percentage of installation appointments for Georgia and Louisiana CLECs than for its own retail customers, and BellSouth provisions voice grade loops for CLECs in substantially the same time as it does for its own retail customers. *See Application* at 109-10. KMC Telecom questions BellSouth’s performance, *see KMC Comments* at 3-4, but only by ignoring BellSouth’s excellent record. As K.L. Ainsworth explains in his reply affidavit, KMC Telecom’s characterizations of BellSouth’s performance in provisioning analog two-wire loops and DS1 loops bear no correlation to the actual record. For example, while KMC Telecom alleges that BellSouth missed installation appointments for more than 25 percent of KMC’s two-wire loop orders in August, BellSouth’s internal records indicate that KMC Telecom was responsible for every single one of the installation appointments actually missed. *BellSouth Ainsworth Reply Aff.* ¶ 36. KMC Telecom made similar claims in the proceedings before the GPSC, but they were specifically rejected: “The Commission finds unconvincing KMC’s claim that BellSouth often misses the firm appointment time to cutover a loop. . . . KMC has provided little evidence to substantiate this claim.” *GPSC Comments* at 163. By contrast, the August and September MSS reports for both Georgia and Louisiana indicate that BellSouth met or exceeded the parity standard for every single installation appointment submetric for two-wire analog loops, DS1 loops, and UNE other design loops. *See BellSouth Monthly State Summaries – Georgia, August-September 2001* (B.2.18); *BellSouth Monthly State Summaries – Louisiana, August-September 2001* (B.2.18).

The record also belies Mpower’s assertion that BellSouth’s Georgia maintenance and repair performance has been “so poor as to be unreasonable and discriminatory.” *Mpower, et al.*

Comments at 25. Between May and August, BellSouth actually met a greater percentage of maintenance and repair appointments for CLEC customers than it did for its own retail customers (B.3.1.8, B.3.1.9), completed maintenance and repair work in substantially less time for CLEC loops than for BellSouth's own retail customers (B.3.3.8, B.3.3.9), and provided CLECs high quality maintenance and repair services (B.3.4.8, B.3.4.9). BellSouth also provides high-quality maintenance and repair services, such that CLEC customers have suffered a lower percentage of repeat troubles than have BellSouth retail customers (B.3.4.8, B.3.4.9).⁵⁶

Notwithstanding MPower's assertion to the contrary, *see Mpower, et al. Comments* at 30-31, BellSouth does not restrict CLECs' access to SL1 loops for end users that BellSouth serves through DLC equipment. BellSouth will fill an SL1 loop order whenever the necessary facilities are available, and BellSouth imposes no requirement that CLECs order SL2 loops simply because DLC equipment is present. *See BellSouth Latham Reply Aff. ¶ 7* (Reply App., Tab H). In the limited circumstances where the desired facilities do not exist, however, BellSouth may be unable to provision a requested SL1 loop. As the courts have made clear, CLECs must take BellSouth's network as they find it. *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications Inc. v. FCC*, 531 U.S. 1124 (2001); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

Nor is there any merit to the assertion by Cbeyond that BellSouth provides CLECs with inferior quality DS1 loops. BellSouth utilizes a number of different technologies in provisioning

⁵⁶ Between June and September, BellSouth missed only one of the applicable "repeat trouble report" submetrics (B.3.4.9.2 (2-wire analog loop non-design)), and it only missed that submetric during a single month (August). Moreover, that August miss is largely accounted for by the minimal CLEC sample size. *See BellSouth Monthly State Summaries – Georgia, June - September 2001.*

DS1 loops, including T-1, HDSL, HDSL2, and fiber-fed multiplexing, each of which meets the ANSI standards and specifications. *See BellSouth Milner Reply Aff.* ¶¶ 25-30 (Reply App., Tab J). Moreover, BellSouth always delivers DS1 loops with a 4-wire interface, regardless of the particular technology deployed. *Id.* ¶¶ 25, 27-29. The GPSC investigated and dismissed Cbeyond's claim to the contrary: "The Commission is satisfied with BellSouth's explanation of events and finds it particularly noteworthy that, when asked by BellSouth to provide examples of alleged improper provisioning by BellSouth, Cbeyond apparently was unable to do so." *GPSC Comments* at 107.

B. xDSL-Capable Loops

BellSouth has demonstrated that its nondiscriminatory processes and procedures for the pre-ordering, ordering, and provisioning of xDSL-capable loops and related services provide Georgia and Louisiana CLECs a meaningful opportunity to compete in the advanced services market. CLECs have real-time electronic access (through LENS, TAG, and RoboTAGTM) to the loop makeup information contained in BellSouth's LFACS and OPEDS databases – the same loop makeup information that is available to BellSouth personnel. *See BellSouth Stacy Aff.* ¶¶ 228-231; *Ex Parte* letter from Kathleen B. Levitz, BellSouth, to Magalie Roman Salas, Secretary, FCC, Attach. at 4 (filed Oct. 26, 2001).⁵⁷ Going beyond its legal obligations to moot any conceivable issue, BellSouth has recently made an additional, redundant resource (known as

⁵⁷ Covad's discussion of the additional costs purportedly associated with acquiring loop makeup information in BellSouth's region is both incoherent and internally inconsistent. *See Covad Comments* at 15-17. Like Pacific Bell, BellSouth offers real-time electronic access to the loop makeup information contained in its databases, refuting any claim that BellSouth's systems compel Covad personnel to spend more time accessing this information in BellSouth's territory. Likewise, to the extent that the loop makeup information is not contained in BellSouth's electronic database, Covad must request (and pay for) a manual lookup. In neither region does Covad itself perform a manual lookup of loop makeup information. *Compare id.* at 16.

“super loopy”) available to CLECs. *See BellSouth Stacy Reply Aff.* ¶ 176. To the extent that the BellSouth databases do not contain the desired loop makeup information, BellSouth’s outside plant engineers can perform a manual lookup in BellSouth’s Corporate Facilities database. *See BellSouth Stacy Aff.* ¶¶ 231-232; *BellSouth Latham Aff.* ¶ 25 (Application App. A, Tab M).⁵⁸ With this information, CLECs can determine whether they can provision a desired xDSL service to a prospective customer. *See LPSC Evaluation* at 38. CLECs additionally can choose among a variety of unbundled loop types, selecting and reserving the particular loop type that best supports the service they seek to offer.

In light of the comprehensive performance data indicating that CLECs have a meaningful opportunity to compete in the market for advanced services in both Georgia and Louisiana, CLEC comments on BellSouth’s performance are limited in number and in substance. For example, the fact that BellSouth has made limited performance-related payments to Covad, *see Covad Comments* at 35 & n.73, in no way undercuts BellSouth’s aggregate demonstration of checklist compliance. The operative standard is not perfection, *see Texas Order* ¶ 284, but whether the local service market has been opened to competition. In both Georgia and Louisiana, the advanced services market undoubtedly has been so opened. Nor can Covad legitimately claim that “BellSouth has chosen to deploy certain flawed DLC units that create ISDN loops that do not meet technical specifications and thus will not support IDSL.” *Covad Comments* at 26. While BellSouth BRI loops meet industry standards for ISDN, *see BellSouth Milner Reply Aff.* ¶¶ 34-36, IDSL service will not function over certain slots in some DLC

⁵⁸ To the extent that any information contained in LFACS is inaccurate, CLECs and BellSouth are similarly affected. *See Kansas/Oklahoma Order* ¶ 126.

equipment. *See Texas Order* ¶ 301 & n.840. BellSouth developed a new loop offering, the UDC/IDSL, to support Covad's IDSL service.

The evidentiary record additionally belies Mpower's contention that it has had trouble ordering xDSL-capable loops. Mpower bases its claim on purported shortcomings with BellSouth's processes for ordering loop conditioning. *See Mpower, et al. Comments* at 15. But as Jerry Latham explains in his reply affidavit, for the 33,964 xDSL loops in service in BellSouth's entire region as of September 30, 2001, CLECs have placed only 103 orders for loop conditioning. *See BellSouth Latham Reply Aff.* ¶ 6. Given the minimal number of loop conditioning orders placed by CLECs in the aggregate, Mpower cannot seriously maintain that BellSouth's manual ordering processes have had any substantive impact on its ability to order xDSL-capable loops.

C. Line Sharing and Line Splitting

BellSouth also has fully complied with its obligations under the *UNE Remand Order*, the *Line Sharing Order*,⁵⁹ and the *Line Sharing Reconsideration Order*,⁶⁰ allowing CLECs to line-share and line-split in accord with this Commission's directives. In both Georgia and Louisiana, BellSouth provisions line sharing in a timely, accurate, and nondiscriminatory manner. While BellSouth has missed some line sharing performance metrics, these measures do not always reflect BellSouth's record. For example, Georgia CLECs reported a greater percentage of line

⁵⁹ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999).

⁶⁰ Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 2101 (2001).

sharing (non-dispatch) troubles in August than did BellSouth's retail customers (B.3.2.7.2). But when BellSouth technicians investigated these "troubles," the vast majority (18 of 22) proved to be either CLEC-caused or nonexistent. *See BellSouth Varner Reply Aff.* Exh. AJV-10, ¶ 58. Once these "troubles" are excluded, CLEC and BellSouth retail customers experience comparably high levels of quality (more than 99% trouble free). During each of the past two months, BellSouth has also met substantially the same percentage of repair appointments for CLEC line sharing customers as it has for its own retail customer. *See BellSouth Monthly State Summaries – Georgia, August - September 2001* (B.3.1.7).

Consistent with this Commission's *Line Sharing Reconsideration Order*, BellSouth permits CLECs to engage in line sharing in the limited circumstances where BellSouth has deployed Next Generation Digital Loop Carrier ("NGDLC") equipment. AT&T's contention to the contrary, *see AT&T Turner Decl.* ¶¶ 10-11, has no basis in either law or fact. Throughout BellSouth's region, CLECs can choose whether to access the high-frequency portion of the loop ("HFPL") at a BellSouth central office or at a remote terminal, and CLECs can engage in line sharing or line splitting whether the customer is served by an all-copper loop, or by a combination of copper and DLC equipment. When a customer is served via DLC, CLECs can provide data service by accessing the HFPL at the remote terminal, before the copper subloop enters the NGDLC equipment. A CLEC can collocate its own DSLAM at or near the remote terminal, and then purchase unbundled dark fiber or a fiber distribution subloop in order to transport the data signals through the central office and onto the packet switched network. *See BellSouth Milner Reply Aff.* ¶ 43.⁶¹ Nothing more is required under either the 1996 Act or this

⁶¹ Nor is there any merit to AT&T's assertion that BellSouth must permit CLECs to place their integrated DSLAM line cards in BellSouth's NGDLC equipment. *See AT&T Turner Decl.*

Commission's rules. See Letter from John A. Rogovin, Deputy General Counsel, FCC, to W.J. Tauzin, Chairman, Committee on Energy and Commerce, Attach. at 3 (Aug. 3, 2001) ("Accordingly, pursuant to the Commission's rules, a CLEC seeking to line-share when there is fiber deployed in the loop can access the high frequency portion of a copper loop by collocating a DSLAM at the ILEC's remote terminal and then leasing access to dark fiber or the subloop network element for the transmission of data traffic from the remote terminal to the central office.").

AT&T's additional assertion that BellSouth has refused to permit line splitting, *see AT&T Turner Decl.* ¶ 20, is doubly false. First, BellSouth offers the same arrangement to CLECs as that described by the Commission in the *Texas Order* and the *Line Sharing Reconsideration Order*. See Ga. SGAT § II.B.9.b (Application App. A, Tab Q, Exh. JAR/CKC-5); La. SGAT § II.A.9.b (Application App. A, Tab Q, Exh. JAR/CKC-6)). Any CLEC can engage in line splitting by ordering an unbundled loop to the CLEC's collocation space, coupled with unbundled switching and shared transport. See *BellSouth Williams Aff.* ¶ 39 (Application App. A, Tab W). Moreover, when a CLEC seeks to engage in line splitting over a loop that had been used to provide UNE-P voice service, BellSouth will cross-connect the same underlying loop facilities to the data CLEC's collocation space. Once the loop and port combination have been separated, however, the arrangement ceases to be a UNE-P. See *BellSouth Williams Reply Aff.* ¶¶ 11-15 (Reply App., Tab T). Rather, the UNE-P arrangement has been replaced "with a

¶¶ 12-13. The Commission requested comment on this precise issue in the NPRM accompanying the *Line Sharing Reconsideration Order*, and BellSouth has no present legal obligation to provide such access to its own NGDLC equipment. See *Line Sharing Reconsideration Order* ¶ 56. Because CLECs can collocate their own DSLAM equipment at or near BellSouth remote terminals, BellSouth need not make its own packet switching facilities available to CLECs. See *UNE Remand Order* ¶¶ 306, 313.

configuration that allows provisioning of both data and voice service” – typically an unbundled loop, cross-connects, unbundled switching and shared transport. *Texas Order* ¶ 325; *see also Line Sharing Reconsideration Order* ¶ 19 (“if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services”). AT&T’s claim that BellSouth should charge UNE-P rates for this arrangement, *see AT&T Turner Decl.* ¶ 28, which is decidedly not a UNE-P, has no basis in federal law.

AT&T’s assertion that BellSouth does not provide CLECs with “the tools necessary for line splitting,” *id.* ¶ 19, is apparently based upon the assumption that BellSouth has some present legal obligation under section 251 or 271 to provide splitters on an unbundled basis. BellSouth has no such obligation.⁶² The Commission rejected this precise argument in the Texas 271 proceedings, explaining that “[t]he Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.” *Texas Order* ¶ 327. The *Line Sharing Reconsideration Order* is to the same effect. *See Line Sharing Reconsideration Order* ¶ 25 (“in the *Fifth Further NPRM* (also known as the New Networks

⁶² Nor is BellSouth required to have systems in place to support electronic ordering of line splitting, as AT&T contends. *See AT&T Comments* at 45. The *Line Sharing Reconsideration Order* requires nondiscriminatory access to the OSS needed for line splitting, but “does not require [BellSouth] to have implemented an electronic OSS functionality to permit line splitting.” *Massachusetts Order* ¶ 180. BellSouth is developing electronic ordering functional for line splitting, which is scheduled for product release on January 5, 2002. *See BellSouth Stacy Reply Aff.* ¶ 246.

proceeding),^[63] we . . . asked whether or not attached equipment that is used for both voice and data services (e.g., the splitter) should be included in the definition of the loop”).

Although BellSouth has no legal obligation to provide splitters to CLECs that seek to engage in line sharing or line splitting, BellSouth has gone beyond the requirements of the *Line Sharing Order* and the *Line Sharing Reconsideration Order* by offering CLECs the use of BellSouth-owned splitters. As Tommy Williams explains in his reply affidavit, “BellSouth will allow the CLEC to provide its own splitter, or lease a BellSouth owned splitter for both Line Sharing and Line Splitting, for central office based solutions and remote terminal based solutions, and for existing or new customers.” *BellSouth Williams Reply Aff.* ¶ 8. BellSouth will purchase, inventory, install, and maintain splitters in any of three complements: a 96-line unit, a 24-line unit, and an eight-line unit. *Id.* ¶ 9. Because BellSouth has no federal obligation to provide splitters at all, BellSouth clearly has no obligation to provide access to splitters one “line at a time,” as AT&T wrongly contends. *See AT&T Turner Decl.* ¶ 29.

VI. APPROVAL OF THIS APPLICATION IS IN THE PUBLIC INTEREST

A. Section 271 Approval Will Save Consumers Hundreds of Millions of Dollars Per Year

BellSouth demonstrated in its Application that there is overwhelming evidence, including the repeated findings of this Commission itself, that section 271 approval vastly accelerates both local and long-distance competition. *See Application* at 150-58. To quote Chairman Powell, “[w]e see a correlation between the process for approving applications and growing robustness in

⁶³ See Fifth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 17806, ¶ 122 (2000).